IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02/04/2004

Coram:

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.A. No. 876 of 2001 and W.A. No. 880 of 2001

K.K. Senthilkumaran ... Appellant in WA 876 of 01

Mrs. K. Jayashree Vijaya chitra Appellant in WA 880 of 01

-Vs-

The Secretary
Tamil Nadu Public Service Commission ... Respondent in
Chennai 2 both the appeals

Appeals under Cl.15 of the Letters Patent against the order dated 28-9-2000 in W.P. No.17070/93 and W.P. No.1718/95

!For Appellants -- Mr. T. Visvanatha Rao

^For Respondent -- Mr. Paul Vasanthakumar

:JUDGMENT

(Delivered by V.S. SIRPURKAR, J.)

This will be a peculiar case of successful operation but, the patient collapsing. The following are the facts:

2. Appellants herein, who are brother and sister, challenged the orders passed by the Tamil Nadu Public Service Commission (TNPSC hereinafter), by which TNPSC cancelled their provisional selection for the Government service. Brother Dr. K.K. Senthilkumaran, appellant in W.A. No.876 of 2001, had applied for being selected as Assistant Surgeon while, the sister Mrs. K. Jayashree Vijayachitra, appellant in W.A. No.880 of 2001, for the post of Labour Officer. Both of them were duly selected though not appointed. While appearing for the selection, they claimed the status of the Scheduled Caste. They claimed that they belonged to the community Puthirai

Vannan, a Scheduled Caste community. In case of both of them, the Collector, Madras, within whose territorial jurisdiction they were ordinarily residing, had confirmed the caste certificates issued by the Tahsildar that they were belonging to Puthirai Vannan, which was a scheduled caste community. At the time of their selection, when they were directed to produce the community certificates, the appellants produced the certificates issued by the Headquarters Tashildhar, Mambalam-Guindy Taluk. These certificates were examined by the Coll ector, Madras, who confirmed the said certificates holding that the appellants to be belonging to Hindu Puthirai Vannan community. The order goes on to say: The community of Dr. Thiru K.K. Senthil Kumaran, s/o Thiru K. Krishnan is hereby confirmed as Hindu Puthirai vannan Scheduled Caste on the basis of enquiry and verification of records. Hence the community certificate issued by the Tahsildar, MambalamGuindy Taluk in D.Dis No.5481/90 dated 20-2-1990 in favour of the captioned individual is confirmed as a bona fide one. Identical is the order in case of his sister also. However, this was not accepted by TNPSC. TNPSC, it seems, went into the issue whether the appellants herein did really belong to Puthirai Vannan community. This enquiry was probably initiated because, the community of K.K. Senthil Kumaran, in his S.S.L.C. book was mentioned as Vannan. This was, however, got corrected earlier on the basis of the application given by the father of the appellants. TNPSC also referred to a certificate issued by the Tahsildar, Thiruchendur about the nativity of the father of the appellants and observed that the appellants father had in fact permanently settled at Madras and, therefore, the Tahsildar, Tiruchendur could not have given the certificate. Very curiously, TNPSC then went on to record as follows:

It is seen from the above fact that the Collector did not cause proper enquiry in this regard. His report is based on the community certificate of the father of the candidate which is not correct. The Commission has analysed the issue in depth and has decided that Dr. K. Senthilkumaran does not belong to Puthirai Vanna community (scheduled caste) On this basis, TNPSC issued show cause notices and ultimately cancelled the provisional selection of the appellants. The appellants were also debarred for three years from appearing for further recruitment to be made by TNPSC.

3. Being aggrieved by this, writ petitions came to be filed, which were disposed of by the learned single Judge by a common order. After referring to the facts in details, the learned Judge has, in paragraph 8, held that TNPSC had decided the cases on merits and the action of TNPSC in rejecting the applications and cancelling the provisional selection of the appellants to the post of Assistant Surgeon in the Tamil Nadu Medical Service and Officer in the Labour Service and the punishment imposed were in order. There does not appear to be any discussion regarding the merits or the powers of TNPSC to issue such an order. Be that as it may, aggrieved by the order of the learned single Judge, these appeals have been filed.

4. Learned counsel for the appellants brought to our notice that genuine community certificates were issued in case of both the appellants by the authorities who had the necessary power to issue those certificates. Learned counsel points out that the genuineness of those certificates issued by the Tahsildar, Mambalam-Guindy, Madras was never questioned by the TNPSC

nor is being challenged here also. Learned counsel further points out that when a doubt was entertained in respect of those certificates, those certificates were also enquired into by the Collector, Madras and a full-fledged enquiry went into for that exercise and the Collector had very clearly held those certificates to be genuine certificates and also confirmed the finding in those certificates that the appellants/writ-petitioners belonged to scheduled caste community called Puthirai Vannan. Learned counsel then points out that there was no authority in the Commission, i.e. TNPSC to sit as an appellate authority to the order passed either by the Tahsildar or by the Collector and to come to its own conclusion on merits that the appellants did not belong to scheduled caste community. He points out that TNPSC, in cancelling the provisional selection and inflicting the punishment on the basis of the reasoning given by it, has travelled outside its own jurisdiction. Learned counsel points out that TNPSC could not have cancelled the caste certificates on the ground that they were not correctly granted.

5. As against this, Mr. Paul Vasanthkumar, learned standing counsel for TNPSC says that TNPSC had the perfect authority to check the certificates because it is only on the basis of those certificates that the further selection and appointment depended. He relies on Rule 5 (e) of TNPSC Rules of Procedure, 1996. The second and the most attractive argument of Mr. Paul Vasanthkumar is that this Court did not have the jurisdiction to entertain the writ petitions at all because this was a question pertaining to the recruitment to Government service and, therefore, any such challenge could have been made before the State Administrative Tribunal. Learned counsel relies on Sec.15 of the Administrative Tribunals Act to suggest that this subject essentially falls within the jurisdiction of the State Administrative Tribunal and, relying on Sec.28 of the Administrative Tribunals Act, contended that the jurisdiction of the High Court was completely excluded in this behalf.

6. There can be no dispute that the question actually pertained to the recruitment of the appellants to the Government service and, therefore, covered by Sec.15 of the Administrative Tribunals Act. There can be further again no question that what TNPSC had done was to cancel the provisional selection of the appellants and as such the jurisdiction of this Court was excluded by Sec.28 of the Administrative Tribunals Act and, therefore, this Court could not have entertained the writ petitions.

7. The question, however, is whether TNPSC could have actually acted as the appellate authority to the orders passed by the Tahsildar and the Collector. If the TNPSC went on to quash the selection for the reasons extraneous or by using the powers which were never there, could it be said to be action within the jurisdiction of TNPSC? Could it even be called to be a bona fide action on the part of TNPSC? In our opinion, what TNPSC has done in this case is they have assumed to themselves the appellate powers over the Tahsildar s and Collector s orders. Then they went on to examine the correctness of the order of the Collector. In our opinion, this was not possible. The role of TNPSC in examining the certificates would only be limited to see as to whether the certificates were true and genuine or

not. The correctness of the information given in the certificates could not be tested by the TNPSC. In this case, the correctness of the community certificate of the appellants was tested by the Collector, Madras, within whose territorial jurisdiction the appellants were ordinarily residing, who had the necessary authority to do so. Once that was done, TNPSC could not assume for itself the powers to sit over the judgment of the Collector. In our opinion, the whole exercise in cancelling the provisional selection was absolutely uncalled for. Therefore, the action taken by TNPSC was itself a non est action. The Court could entertain the writ petition only to the limited extent of quashing the finding by the TNPSC that the petitioners were not Scheduled Caste candidates.

We cannot, however, grant the relief of quashing the order of TNPSC by which the selection was cancelled because, that would be the power of the State Administrative Tribunal. We only point out that TNPSCs action in holding that the appellants did not belong to scheduled caste community was completely incorrect and without any justification and without any power and hence, that order to that extent is erroneous in law. With this, we allow the appeals to the extent that we have indicated in the sense that we set aside the declaration by the TNPSC that the community certificates produced by the appellants were not correctly granted. It will be now for the appellants to move the proper authority for the relief.

The appeals are disposed of. No costs.

Index:Yes
Website:Yes
Jai

To:

The Secretary Tamil Nadu Public Service Commission Chennai 600 002